JUN 29 1973

MICHAEL RODAK, JR., CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-36

FREEHOLD REGIONAL HIGH SCHOOL EDUCATION ASSOCIATION, a non-profit corporation of the State of New Jersey,

*Petitioner,*

*vs.*

STATE OF NEW JERSEY,

*Respondent.*

**PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION AND FOR A STAY OF COLLECTION OF FINE**

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## TABLE OF CONTENTS


| | PAGE |
|---|---|
| OPINIONS BELOW | 2 |
| JURISDICTION | 2 |
| QUESTIONS PRESENTED | 3 |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED | 3 |
| CONCISE STATEMENT | 3 |
| REASONS FOR GRANTING THE WRIT: | |
| Imposing a fine exceeding $500 upon a non-profit corporation found guilty in a trial (with jury denied) of criminal contempt for violating a restraining order violates the United States Constitution | 6 |
| CONCLUSION | 19 |
| Application for an Order Staying Collection of Fine | 19 |
| APPENDIX: | |
| A—Order of the Supreme Court of New Jersey, September Term, 1972, Holding Certification Petition | 1a |
| B—Order of the Supreme Court of New Jersey, September Term, 1972, Denying Certification | 2a |
| C—Opinion of the Supreme Court of New Jersey in Parallel Case of Fair Lawn Education Association (A-34, In re Mellor) | 3a |
| D—Per Curiam Opinion of the Superior Court of New Jersey, Appellate Division | 16a |

PAGE

E—Order to Show Cause (In Contempt) of the Superior Court of New Jersey, Chancery Division ..... 22a

F—Temporary Restraint and Order to Show Cause of Superior Court of New Jersey, Chancery Division ..... 25a

G—New Jersey and United States Constitution and Statutes ..... 28a

**Cases Cited**

Bloom v. Illinois, 391 U. S. 194 (May 20, 1968) ..... 7, 9-12, 14, 15

Buehrer, In re, 50 N. J. 501, 236 A. 2d 592 (1957) ..... 14

Cheff v. Schnackenberg, 384 U. S. 373 (1966) ..... 7, 12

County of McLean v. Kickapoo Creek, Inc., 51 Ill. 2d 353, 282 N. E. 2d 720 (Ill. Sup. Ct. 1972) ..... 18

Duncan v. Louisiana, 391 U. S. 145 (May 20, 1968) .. 7, 9-12, 15

Grosjean v. American Press Company, Inc., 297 U. S. 233 (1936) ..... 16

Illinois v. Allen, 397 U. S. 337 (1970) ..... 13, 14

Johnson v. Mississippi, 403 U. S. 212 (1971) ..... 13, 14

Mayberry v. Pennsylvania, 400 U. S. 455 (1971) ..... 12, 14

State v. Owens, 54 N. J. 153, 254 A. 2d 97 (1959) ..... 15

United States v. Barnett, 376 U. S. 681 (1964) ..... 11, 12

United States v. R. L. Polk & Co., 438 F. 2d 377 (6 Cir. 1971) ..... 18

United States v. United Mine Workers of America, 330 U. S. 258 (1947) ..... 9-11

PAGE

**United States Constitution Cited**

Sixth Amendment ..... 3, 7, 8, 17
Fourteenth Amendment ..... 3, 7, 8, 17

**New Jersey Constitution Cited**

Article 1, Paragraph 19 ..... 3
Article III, Section 2 ..... 7

**Statutes Cited**

Motor Vehicle Act ..... 15
New Jersey Laws, 1968:
Ch. 113 ..... 15
Ch. 303 ..... 4
N.J.S. 1:1-2 ..... 16
N.J.S. 2A:10-1 ..... 3
N.J.S. 2A:85-6 ..... 3, 15
N.J.S. 2A:85-7 ..... 3, 15
N.J.S. 2A:169-1 through N.J.S. 2A:171-12 ..... 15
N.J.S. 2A:169-4 ..... 3, 15
N.J.S. 18A:58-16 ..... 17
N.J.S. 40:24-2 ..... 15
N.J.S. 40:49-5 ..... 15
Ch. 30, Sec. 1 ..... 15
N.J.S. 39:3-8 ..... 15
N.J.S. 39:4-203 ..... 15

PAGE

N.J.S.A. 34:13A-1 ..... 4

Norris-LaGuardia Act:

Sec. 11 ..... 10

State Budget Law ..... 4

Traffic Act ..... 15

28 U.S.C.:

Sec. 1257 (3) ..... 3

IN THE

# Supreme Court of the United States

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No.

FREEHOLD REGIONAL HIGH SCHOOL EDUCATION ASSOCIATION, a non-profit corporation of the State of New Jersey,

*Petitioner,*

*vs.*

STATE OF NEW JERSEY,

*Respondent.*

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

Freehold Regional High School Education Association, a non-profit corporation of the State of New Jersey, petitions for a writ of certiorari to review the judgment of the Appellate Division of the Superior Court of New Jersey, and for a stay of collection of fine in the sum of $50,000, pending disposition of the matter by this Court.

## Opinions Below

The opinion of the Appellate Division of the Superior Court of New Jersey on appeal (as on trial *de novo*) from the summary conviction for contempt of court for violating a restraining order of the Chancery Division of the Superior Court of New Jersey is dated January 25, 1973, and is unreported, but is set forth at Appendix D, *post*.

On petitioning for certification to the Supreme Court of New Jersey (a form of appeal) to review the aforesaid decision of the Appellate Division of the Superior Court, the Supreme Court first denied certification insofar as it involved the 11 individual defendants and held the petition for further consideration as to the Association "until determination of A-34, In Re: Mellor". Appendix A, *post*. Thereafter, the Supreme Court on May 21, 1973, rendered an opinion in the *Fair Lawn* matter [also called "In re Mellor"] on the question of the constitutionality of the size of contempt fine (Appendix C, *post*) and the same day denied the petition for certification as to the present Association (Appendix B, *post*). Accordingly, the opinion of the Supreme Court of New Jersey in the *Fair Lawn Education Association* case is reproduced in full and attached to the foot of this brief, as explaining the legal reasoning of the Supreme Court of New Jersey in denying certification in this case (Appendix C, *post*).

## Jurisdiction

The order of the Supreme Court of New Jersey denying certification (that is, refusing to entertain an appeal from the final decision of the Appellate Division of the Superior Court) was entered on May 21, 1973. The opin-

ion of the Appellate Division of the Superior Court of New Jersey is dated January 25, 1973. The jurisdiction of this Court is invoked under 28 U.S.C., Sec. 1257 (3).

## Questions Presented

1. Whether imposing a fine exceeding $500 upon a non-profit corporation found guilty in a trial (with jury denied) of criminal contempt for violating a restraining order violates the United States Constitution?

2. Whether a state court may deny a jury trial to a non-profit corporation charged with criminal contempt for allegedly violating a court restraining order at some distance away from the court room and court house, and after finding of guilty validly sentence that corporation to a fine exceeding $500?

## Constitutional and Statutory Provisions Involved

28 U.S.C. Sec. 1257 (3).

Sixth Amendment to the U. S. Constitution.

Fourteenth Amendment to the U. S. Constitution.

New Jersey Constitution, Art. 1, Par. 19.

New Jersey Statute 2A:10-1, 2A:85-6, 2A:85-7, 2A:169-4.

(For the foregoing see Appendix G, *post.*)

## Concise Statement

Petitioner, Freehold Regional High School Education Association, is a non-profit corporation of the State of New Jersey, whose membership consists of approximate-

ly 400 teachers and related personnel employed in the 4 regional high schools, and functions under Chapter 303, New Jersey Laws of 1968, N.J.S.A. 34:13A-1 *et seq.*

Early in 1972 the Board of Education and the Education Association were negotiating for a new collective bargaining agreement to succeed the expiring agreement. Because of the requirements of the provisions of the State Budget Law for boards of education, a budget for the school year starting in September must be adopted no later than the preceding February or March. It was therefore shocking to the teachers and their Association leaders and negotiators to have the negotiations drag on beyond the adoption of the budget. This convinced them that the Board of Education was not negotiating in good faith, but was adamant and determined to have its own way. Exasperated by the futility of the negotiations and feeling the pressure of the ever-nearing expiration date of the existing agreement, many of the teachers failed to appear at their respective schools for their normal duties for several days.

On April 20, 1970, the Board of Education *ex parte* and without notice to the Association or to any individual petitioners applied to one Superior Court judge with a verified complaint and obtained a temporary restraint and order to show cause directing the Association and 11 of its leaders to show cause before the Chancery Division of the Superior Court on May 5, 1972, why an order should not be issued restraining their actions, and said papers were served. The very next day, April 21, 1972, a different judge issued an order to show cause (in contempt), returnable May 5, 1972, charging the Association and each of the 11 individuals with violating the restraining order and requiring the defendants to show cause why they should not be held in contempt of

court and time for service of said order to show cause was extended by subsequent order.

On May 15, 1972, the contempt citation came on for trial before State District Court Judge Yaccarino without a jury.

The attorney for the defendants moved for a trial by jury, inasmuch as the court might not feel limited as to the penalty to be imposed in the event of conviction. This was denied. Testimony was taken from certain witnesses presented by the prosecuting attorney as to the absences of the defendants from school, etc., all of which were actions or inactions committed a very long distance from the court room and court house.

The trial ended that day and the next day the court orally delivered its decision finding all of the defendants, Association and individuals, guilty, and imposed sentences fining the Association $100,000 and fining the individuals $500 each plus varying terms of incarceration (2, 3 and 4 months) in the county jail.

On appeal to the Appellate Division of the Superior Court of New Jersey that Court (by opinion dated January 25, 1973, Appendix A) affirmed the judgment, but modified the sentence against the Association by reducing the fine from $100,000 to $50,000, overruling the argument presented to it that the Association could not be fined $100,000 in a non-jury contempt proceeding; and reduced the actual incarceration as to each individual defendant, but left their fines and costs as imposed below.

A petition for certification (the only method of obtaining review by the Supreme Court of New Jersey) was filed and on March 28, 1973 (mailed to counsel April 10, 1973) the Supreme Court of New Jersey issued its order (a copy of which is marked Appendix A, attached

hereto, and made part hereof) and thereby ordered that the application for certification as to the individual defendants was denied, and as to the Association, held until determination of a parallel case involving the Fair Lawn Education Association. (Its opinion in that case was filed May 21, 1973, and sustained a fine of $17,350 against a similar non-profit corporation whose members were teachers and related personnel in a similar school district. A copy of that opinion is marked Appendix C, attached hereto and made part hereof.) Based upon the Supreme Court's disposal of the Fair Lawn matter, the Supreme Court then denied certification as to the present petitioning Association (Appendix B, *post*).

## REASONS FOR GRANTING THE WRIT

**Imposing a fine exceeding $500 upon a non-profit corporation found guilty in a trial (with jury denied) of criminal contempt for violating a restraining order violates the United States Constitution.**

The essential and important question raised in this case is whether, after a trial court has denied a non-profit corporation a trial by jury on a criminal contempt of court charge, it may lawfully impose a fine upon that defendant exceeding $500, or whether such a greater fine violates the United States Constitution and its amendments.

The Appellate Division, in affirming the judgment against the Association, rejected the argument that the Court "could not impose a fine of $100,000 against the Association in a non-jury contempt proceeding * * *. We are mindful that this issue may be the subject of further consideration by our Supreme Court by virtue of

its granting a petition for certification in *In the Matter of Ilona Mellor et al. Charged with Contempt of Court*, 60 N. J. 500 (1972)". [Such decision in *Fair Lawn* is printed *post* at p. 3a.]

The Appellate Division thereupon reduced the fine against the Association from $100,000 to $50,000 and costs of court.

This Court, in *Bloom* v. *Illinois*, 391 U. S. 194 (May 20, 1968), held that prosecutions for serious criminal contempt are subject to the jury trial provisions of Article III, Section 2, of the United States Constitution and of the Sixth Amendment, which is made binding upon the states by virtue of the due process clause of the Fourteenth Amendment. This Court further held in that case that a trial of a defendant in a state court on a charge of criminal contempt (for which under the state law no maximum punishment was provided), and in which the defendant's timely motion for a jury trial was denied by the court, and the defendant found guilty and sentenced to imprisonment for 24 months, violated the aforesaid provisions of the United States Constitution.

This Court pointed out that, although criminal contempt is not a crime of the sort that always requires the right to jury trial, regardless of the penalty involved nevertheless, when, under the rule in *Cheff* v. *Schnackenberg*, 384 U. S. 373 (1966), the state Legislature has not expressed a judgment as to the seriousness of an offense by fixing a maximum penalty which may be imposed, then the courts are to look to the penalty actually imposed as the best evidence of the seriousness of the offense.

In *Duncan* v. *Louisiana*, 391 U. S. 145 (May 20, 1968), decided the same day as *Bloom*, *supra*, the Court said that the right to jury trial in serious criminal cases is a fundamental right and must be recognized by the state

as part of their obligation to extend due process of law to all persons within their jurisdiction; that a right to jury trial is granted to criminal defendants in order to prevent oppression by the Government. This Court held that it is doubtless true that there is a category of petty crimes or offenses which is not subject to the Sixth Amendment jury trial provisions and should not be subject to the Fourteenth Amendment jury trial requirement, but the penalty *authorized* for a particular crime is of major relevance in determining whether it is serious or not, and may in itself, if severe enough, subject the trial to the mandate of the Sixth Amendment.

In conclusion, this Court said:

> "In determining whether the length of the authorized prison term *or the seriousness of other punishment* is enough in itself to require a jury trial, we are counseled by District of Columbia v. Clawans, supra, to refer to objective criteria, chiefly the existing laws and practices in the Nation. In the federal system, petty offenses are defined as those punishable by no more than six months in prison and a $500 fine. In 49 of the 50 States crimes subject to trial without a jury, which occasionally include simple battery, are punishable by no more than one year in jail. Moreover, in the late 18th century in America crimes triable without a jury were for the most part punishable by no more than a six-month prison term, although there appear to have been exceptions to this rule. We need not, however, settle in this case the exact location of the line between petty offenses and serious crimes. It is sufficient for our purposes to hold that a crime punishable by two years in prison is, based on past and contemporary standards in

> this country, a serious crime and not a petty offense. Consequently, appellant was entitled to a jury trial and it was error to deny it." (Emphasis added)

Inasmuch as the penalty actually imposed below in *Duncan* v. *Louisiana, supra,* was a sentence of 60 days in prison and a fine of $150, this Court did not attempt to specify the maximum size of fine which would convert an offense into a serious, rather than a petty, offense.

Similarly, in *Bloom* v. *Illinois, supra,* the penalty being reviewed by this court was 24 months imprisonment and again the court found no occasion to discuss the maximum permissible fine under the circumstances of a non-jury trial for an alleged petty offense.

In the present case the trial judge sentenced the Association to a fine of $100,000 for the non-violent action of allegedly inducing or directing its member teachers et als. to violate the temporary restraining order. The Appellate Division reduced that fine to $50,000.

The Supreme Court of New Jersey in the *Fair Lawn* case did not directly deal with our $100,000 fine, but dealt with the *Fair Lawn* fine of $17,350. The Supreme Court of New Jersey in that case pointed out that there is no universal right to a jury trial merely because of the risk of a dollar judgment.

> "So far as money is concerned, judges in equity have always decided issues of civil liability, no matter how large the claim, without the aid of a jury."

The Supreme Court of New Jersey thereupon referred to the fact that in the celebrated case of *United States* v. *United Mine Workers of America,* 330 U. S. 258 (1947) a fine of $10,000 had been imposed upon the defendant

Lewis and a fine of $3,500,000 upon the defendant Union for violating a court order enjoining a strike. It pointed out that this Court there held that there was no right to a jury trial. However, the Supreme Court of New Jersey was somewhat inaccurate as to this. In *Mine Workers* this Court held there was no right to trial by jury because Sec. 11 of the Norris-LaGuardia Act did not apply to that case (330 U. S. at 298). Not the slightest mention was made of any constitutional right to trial by jury as has since been held in *Bloom* and *Duncan, supra.* This Court also there held that the contempt proceeding could deal with both civil and criminal contempt in the same proceeding, a thing no longer permitted in the Federal or New Jersey practice, and therefore, presumably, those fines included both. In *Mine Workers* this Court held that the fine upon Lewis was *valid;* and as to the Union, the majority of this Court concluded that $700,000 be imposed unconditionally with respect to the wrong done, with the balance of $2,800,000 of the fine made conditional.

Also a lot of water has run over the dam since 1947. As this Court pointed out in *Duncan* v. *Louisiana, supra,* this Court is aware of prior cases by this Court in which the prevailing opinion contains statements contrary to the holding in the *Duncan* case that the right to jury trial in serious criminal cases is a fundamental right, and hence must be recognized by the states as part of their obligations to extend due process of law to all persons within their jurisdiction. Accordingly, it is more than doubtful that this Court, in 1968, when it decided *Duncan* and *Bloom,* would have sustained a similar sized fine running to millions of dollars, or will sustain such fines today.

Accordingly the simple argument that inasmuch as such large fines were sustained as to Lewis and as to the

United Mine Workers, therefore the $100,000 or $50,000 fine imposed upon the present petitioner are also lawful, is clearly erroneous.

It must be borne in mind that the Union in *United Mine Workers* was not a corporation, but an unincorporated association, whereas the present petitioner is a nonprofit corporation. It is equally doubtful that this Court would today sustain a fine of $10,000 against an individual such as Lewis, as it did in that case 25 years ago, except if it includes both civil and criminal penalties.

This Court held in the *Bloom* case that a charge of criminal contempt of court is a charge of serious crime if the penalty authorized or actually imposed exceeds 6 months.

As stated by Justice Goldberg, dissenting in *United States* v. *Barnett*, 376 U. S. 681, 728, at p. 754 (1964):

> ". . . criminal contempts are not essentially different from other 'crimes' or 'criminal prosecutions'. In each case, punishment is imposed for a past violation of a mandate of a coordinate organ of a government; criminal contempt involves punishment for violation of an order of a court; 'crime' involves punishment for violation of a statute enacted by a legislature. I can see no greater need for certain and prompt punishment for the former than for the latter."

The dissenting opinion in that case (*Barnett*) appears to have led the way to the majority opinion in *Bloom* and *Duncan, supra*. Thus, the lack of real distinction between "criminal contempt" and a "crime", which Justice Goldberg bespoke in the above quotation, has now become accepted by the majority of this Court.

As the Court pointed out in *Bloom, supra,* at 196, the decision in *Barnett, supra,* signalled a possible change of view, when a 5-man majority held that there was no constitutional right to jury trial in all contempt cases. *Barnett* was followed by *Cheff, supra,* and thereafter by *Duncan* and *Bloom,* which finally sustained the full constitutional right to trial by jury in serious criminal contempt cases in state courts. Thus the quotation above from Justice Goldberg dissenting in *Barnett, supra,* is very pertinent to the state of law as it exists today. There can be no distinction between "criminal contempt" and other "crime" or "criminal prosecutions".

This Court has permitted to stand a distinction between petty criminal contempts and serious criminal contempts, just as there is a distinction between petty criminal offenses not requiring trial by jury and serious criminal offenses which have a constitutional guarantee of trial by jury.

This Court has found a difference in seriousness of sundry types of criminal contempt of court based upon whether or not the violation is by doing or failing to do an action outside the presence of the court, or whether the violation is activity disruptive of the court proceedings.

Thus, in *Bloom, supra,* the court was dealing with contempt of court based on an attorney wilfully petitioning to probate a will falsely prepared and executed after the death of the putative testator, whereas in *Mayberry* v. *Pennsylvania,* 400 U. S. 455 (1971), the defendant was found guilty of contempt for vilifying the trial judge during the course of the defendant's trial on a criminal statutory charge. The majority of the court was of the opinion that the trial judge could have sentenced Mayberry for contempt of court summarily and forthwith, but that

having delayed doing so, until after the jury verdict after 21 days of trial, the defendant was entitled to a trial before a judge other than the judge reviled by the contemnor.

In *Illinois* v. *Allen*, 397 U. S. 337 (1970), this Court held that a defendant in a criminal trial who engaged in speech and talk which is so noisy, disorderly and disruptive that it is exceedingly difficult or wholly impossible to carry on the trial, may thereby lose his right of confrontation under the Sixth and Fourteenth Amendments and may be removed from the court room while the trial continues. This Court said there are at least three constitutionally permissible approaches for the court's handling of an obstreperous defendant: (1) bind and gag him as a last resort, thereby keeping him present; (2) cite the defendant for criminal or civil contempt; or (3) remove him from the court room while the trial continues until he promises to conduct himself properly.

See also *Johnson* v. *Mississippi*, 403 U. S. 212 (1971).

However, the Supreme Court of New Jersey in the *Fair Lawn* case (applied by it to this case also by denying certification) claimed to find a real and valid distinction between criminal contempt and crime. In the *Fair Lawn* decision that court said:

> "the summary power rests upon necessity. With respect to court orders, the subject matter before us, the court must be able to compel immediate compliance if the court is to be equal to its responsibility under government. Therein lies the critical difference between a violation of a court order and a violation of some penal statute." (Appendix C, *post*).

The Supreme Court of New Jersey went on to say that the underlying need for immediate compliance with an injunctive order could be met on the basis of distinguishing the consequences which ensue upon conviction for a "petty offense" from those which ensue upon conviction for "crime" and that it had accepted a maximum jail term of 6 months as adequate, citing its decision in *In Re Buehrer,* 50 N. J. 501, 517-522, 236 A. 2d 592 (1957). That court then went on to accent the fact that in the *Buehrer* case the court was concerned with an individual and not a corporate offender, and that it was rejecting the rule of this Court in *Bloom* v. *Illinois, supra,* because the *Bloom* case "did not present the element of urgency involved when an injunctive order is disobeyed". Thus, the Supreme Court of New Jersey drew a hitherto unknown distinction between contempt of court complaint for violation of court injunction by activity outside and away from the court room, which involved "an element of urgency" and those which did *not* involve any element of urgency, as *that* court saw the facts.

Perhaps the Supreme Court of New Jersey (although this is not clear) was implying that just as certain elements of disorder created by a person present in the court room could justify summary and unlimited punishment in order to stop the disruption of the court's proceedings, so there could be an element of "urgency" where someone disobeyed a court injunction restraining activities at some distance from the court room.

However, this Court has never drawn this distinction, but has confined its version of urgency to those cases where the activity was disrupting court proceedings; e.g., *Mayberry, supra; Allen, supra;* and *Johnson* v. *Mississippi, supra.*

This Court said in *Duncan, supra,* that

> "The penalty authorized by the law of the locality may be taken 'as a gauge of its social and ethical judgment' 300 U. S. at 628, of the crime in question." (391 U. S. at 160)

The Legislature of New Jersey has expressed the public policy of the citizens of the State as to which offenses are serious, which are petty and what are adequate maximum penalties for the several kinds; thus: (a) disorderly persons offenses (a wide variety of petty offenses) appears in N.J.S. 2A:169-1 through N.J.S. 2A: 171-12; (prior to the decisions in *Bloom* and *Duncan* on May 20, 1968, the maximum penalty for disorderly persons offenses was $1,000 or 6 months, or both, and immediately upon this Court handing down those decisions the Legislature downgraded the maximum penalty for disorderly persons to $500 or 6 months, or both (N.J.S. 2A:169-4, as amended by New Jersey Laws 1968, c. 113)); (b) the present maximum fine for violation of municipal offenses is $500 (N.J.S. 40:49-5, increased from $200 by New Jersey Laws 1968, c. 30, Sec. 1); (c) the present maximum fine for violation of county resolutions is still $200 (N.J.S. 40:24-2); (3) and the present general penalty (maximum) under the Motor Vehicle Act and under the Traffic Act is a fine of $50 or 15 days, or both (N.J.S. 39:3-8 and 39:4-203).

The Supreme Court of New Jersey conceded in *State* v. *Owens,* 54 N. J. 153, 254 A. 2d 97 (1959) that "the maximum punishment for a petty offense is below that authorized for crime", and that the general penalty for crime is a mixiumum fine of $1,000 or imprisonment, or both (N.J.S. 2A:85-7), and even high misdemeanors generally are subject only to a maximum fine of $2,000 or imprisonment, or both (N.J.S. 2A:85-6).

Thus, the $100,000 initially imposed by the trial court, and even the reduced fine of $50,000 to which the penalty was cut by the Appellate Division of the Superior Court, is far in excess of that for the general run of crimes known as misdemeanors (in New Jersey) and even for high misdemeanors, as to both of which grades of crime the Association would have been entitled to indictment *and* trial by jury.

The Association being a non-profit corporation is by N.J.S. 1:1-2 deemed a "person" for the purposes of New Jersey laws, and is so for all constitutional purposes by decision of this Court. *Grosjean* v. *American Press Company, Inc.*, 297 U. S. 233, 244 (1936), where this Court said:

> "but a corporation is a 'person' within the meaning of the equal protection and due process of law clauses * * *."

The attorneys for the defendant (including the Association) moved for a trial by jury, inasmuch as there existed a possibility that the trial court might sentence any one or more of the defendants to a severe penalty, and the trial court denied that motion. Surely it is erroneous to hold that where a corporation is convicted of a "petty offense", to wit, contempt of court, that such corporation may be fined $100,000 or $50,000, whereas an individual person who commits the same offense may not be fined exceeding $500.

The Supreme Court of New Jersey in its opinion in *Fair Lawn* proceeded as if the legislative determination of what is a serious offense and what is a petty offense and what are appropriate maximum penalties for such various offenses cannot apply to contempt of court cases because this is solely within the determination of the

Supreme Court of New Jersey, regardless of whether the violation occurred in an actual court room and was disruptive of then on-going court proceedings or occurred at a location miles from the court room and did not disrupt any court activities in any manner whatsoever. As far as determining what is the law in New Jersey under the New Jersey Constitution and common law, perhaps the New Jersey Supreme Court has the last say, but certainly that cannot be true in a case such as this one in which the size of the fine is violative of the Federal Constitution and its Amendments, to wit, the Sixth Amendment and the Fourteenth Amendment, as explained above.

If there ever is a time when a jury trial may be denied a defendant accused of contempt of court for violating a restraining order by actions some distance away from the court it may be that this is limited to factual situations such as interference with fire fighters leaving their fire house in response to a firm alarm or interference with fire fighters at the scene of a fire, but that is a far cry from any alleged interference with the operation of public schools. In the one case the fire fighters are on duty 365 days a year, 24 hours a day, whereas schools in New Jersey, to receive State aid (a very important part of the school budget) is by law required to operate at least 180 days during the school year (N.J.S. 18A: 58-16), and we all know that there is normally only one shift of teachers, so that schools operate 7 or 8 hours each day, and have any number of legal holidays when school is closed, as well as midterm vacations and a several month summer vacation. Where can this be considered at all comparable to the situation of fire fighters? If fire fighters are interfered with there may be a flagrant destruction of property and lives because of a holocaust. On the other hand, the loss of a few days in

school is not comparable at all, particularly when one keeps in mind that the end of the term can be postponed and extended to make up the missing days.

The Supreme Court of New Jersey does not cite any case in support of its novel theory, and we are not aware of any case supporting it.

On the other hand, we called the attention of the Supreme Court of New Jersey to several cases supporting our position, to wit, the cases hereinabove cited and *United States* v. *R. L. Polk & Co.*, 438 F. 2d 377 (6 Cir. 1971), where the Court of Appeals found imposition of a fine upon a corporation exceeding $500 to be invalid and reduced the same to that sum, because the contempt proceedings did not involve a jury trial and therefore the offense had to be treated as a petty offense.

*Polk* was followed in *County of McLean* v. *Kickapoo Creek, Inc.*, 51 Ill. 2d 353, 282 N. E. 2d 720 (Ill. Sup. Ct., 1972), where the fine on the corporate defendant had exceeded $500.

We submit that the only proper conclusion is that corporations are entitled to be treated as persons and may not lawfully be denied a trial by jury in a criminal contempt case and then fined more than $500. The election of the state to proceed by way of summary contempt proceedings is an election to treat the offense as a "petty offense" and this limits the fine portion of the penalty to $500 maximum, regardless of whether the defendant is an individual or a corporation.

## CONCLUSION

**For the reasons set forth above, the petition for certiorari should be granted.**

Respectfully submitted,

EMIL OXFELD
*Attorney for Petitioner*

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## Application for an Order Staying Collection of Fine

Petitioner respectfully requests this Honorable Court to issue an order staying the collection of the $50,000 fine and costs pending the disposition by this Court of the petition for the writ of certiorari.

Respectfully submitted,

EMIL OXFELD
*Attorney for Petitioner*

[APPENDICES FOLLOW]

# APPENDIX A

**Order of the Supreme Court of New Jersey, September Term, 1972, Holding Certification Petition**

SUPREME COURT OF NEW JERSEY

SEPTEMBER TERM 1972

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In Re:

FREEHOLD REGIONAL HIGH SCHOOL EDUCATION ASSOCIATION, *et als.*,

Defendants-Petitioners.

(C-332)

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To Appellate Division, Superior Court:

A petition for certification having been submitted to this Court, and the Court having considered the same,

It is hereupon Ordered that the petition for certification is denied as to the individual petitioners and is held as to the petitioning organization until determination of A-34, In Re: Mellor. [Fairlawn Education Association].

Witness, the Honorable Joseph Weintraub, Chief Justice, at Trenton on the 28th day of March, 1973.

FLORENCE R. PESKOE
Acting Clerk

FILED
May 23 1973

FLORENCE R. PESKOE
Acting Clerk

## APPENDIX B

**Order of the Supreme Court of New Jersey, September Term, 1972, Denying Certification**

SUPREME COURT OF NEW JERSEY

SEPTEMBER TERM 1972

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In Re:

FREEHOLD REGIONAL HIGH SCHOOL EDUCATION ASSOCIATION, *et als.*,

Defendants-Petitioners.

(C-332)

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To Appellate Division, Superior Court:

A petition for certification having been submitted to this Court, and the Court by its order of March 28, 1973 having denied the petition as to the individual petitioners; it is

ORDERED that the petition for certification as to the petitioning association is denied.

Witness, the Honorable Joseph Weintraub, Chief Justice, at Trenton on the 21st day of May, 1973.

FLORENCE R. PESKOE
Acting Clerk

FILED
May 21 1973

FLORENCE R. PESKOE
Acting Clerk

# APPENDIX C

**Opinion of the Supreme Court of New Jersey in Parallel Case of Fair Lawn Education Association [A-34, In re Mellor]**

SUPREME COURT OF NEW JERSEY

SEPTEMBER TERM 1972

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In the Matter of

FAIR LAWN EDUCATION ASSOCIATION,
Charged with Contempt of Court.

(A-34)

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Argued February 5, 1973—Decided MAY 21 1973.

On certification to the Superior Court, Appellate Division.

*Mr. Abraham L. Friedman* argued the cause for appellant Fair Lawn Education Association (*Mr. Emil Oxfeld,* of counsel; *Messrs. Rothbard, Harris and Oxfeld,* attorneys).

*Mr. Alfred J. Luciani,* Deputy Attorney General, argued the cause for respondent State of New Jersey (*Mr. George F. Kugler, Jr.,* Attorney General of New Jersey, attorney).

The opinion of the Court was delivered by
WEINTRAUB, C.J.

*Appendix C*

This is a contempt proceeding arising out of an illegal strike of school teachers employed in Fair Lawn. The strike was continued in violation of an injunction and was still in process when these proceedings were instituted. Fourteen individuals and Fair Lawn Education Association (herein Association), a nonprofit corporation which represented the teachers in that school district, were convicted of contempt consisting of violations of the injunction. The convictions were affirmed by the Appellate Division. We granted the Association's petition for certification, 60 N. J. 500 (1972), to consider whether a fine was lawfully imposed upon it in the sum of $17,350 notwithstanding that a demand for trial by jury had been overruled. At the time of the strike, 347 teachers in the Fair Lawn system were dues-paying members of the Association. The fine thus amounts to $50 per member.[1]

It would not be fruitful to explore the subject of summary trials at common law. The history is not the clearest. As to the contempt process, the history in our country is definitive and sufficient for this case.

The principles which have emerged may be summarized. All contempts of court are penal offenses and may be prosecuted like other offenses. Some, however, may be prosecuted summarily, that is, without indictment or trial by jury. The offenses thus triable summarily consist of misbehavior in the actual presence of the court, misbehavior of an officer of the court in his official transac-

[1] The individual defendants were each sentenced to six months' imprisonment, one month to be served in custody and the balance suspended. Each was fined $400 and placed on probation for one year commencing upon release from jail.

tions, and violation of an order of the court. These categories were established in 1831 by an act of Congress, now 18 U.S.C.A. §§ 401, 402, and in our State in 1917 by a statute, now N.J.S.A. 2A:10-1. *New Jersey Department of Health* v. *Roselle*, 34 N. J. 331, 340-342 (1961); *In re Buehrer*, 50 N. J. 501, 513-516 (1967).

The sole credible basis for the summary contempt process is necessity, a need that the assigned role of the judiciary be not frustrated. But since the summary contempt process lends itself to arbitrary action, the power has been increasingly circumscribed, and this in two ways. One is by the careful recourse to the reason for the summary power, *i.e.*, the need for it, to the end that a summary power be not invoked beyond that need. Indeed the statutory categories referred to above evolved out of grand debate with respect to that underlying necessity. The other safeguard against the risk of arbitrariness consists of procedural requirements designed as antidotes for that risk.

With respect to procedural antidotes, our practice in contempt matters is calculated to limit the risk of arbitrariness and the appearance of arbitrariness. So, for example, when the charge is a violation of a court order, the penal proceeding may not be heard by the judge whose order was allegedly contemned unless the defendant consents to his sitting. R. 1:10-4. Thereby obviated is the risk which inhered singularly in the contempt area when the offended judge sat in judgment of his own charge. For further assurance, R. 2:10-4 provides that a summary conviction for contempt shall be reviewable on the facts as well as the law and thus affords a scope of review not available when guilt has been found by a jury. And our rule forbids a single proceeding both to punish

for contempt and to give relief to the litigant injured by the contumacious act or omission, unless the defendant consents to that course. The punitive proceeding, which the court alone may initiate, must be plainly marked so that the defendant will know that the aim is to punish him. R. 1:10-2, 4, 5. See *New Jersey Department of Health* v. *Roselle, supra,* 34 N. J. at 342-344; *In re Buehrer, supra,* 50 N. J. at 515-516. The rules governing criminal trials apply fully, save only indictment and trial by jury.

As we have said, the summary power rests upon necessity. With respect to court orders, the subject matter before us, the court must be able to compel immediate compliance if the court is to be equal to its responsibility under government. Therein lies the critical difference between a violation of a court order and a violation of some penal statute. A court order is not intended merely to restate some underlying duty or obligation, civil or criminal. Rather, a court order reflects an underlying wrong already done or threatened, coupled with an urgency or some inadequacy in the ordinary remedy which mandates a coercive remedy. So, here, the subject matter was a strike by public employees in the face of the settled rule that such strikes are illegal. *Board of Education, Borough of Union Beach* v. *New Jersey Education Association,* 53 N. J. 29, 36-37 (1968). The Board of Education obtained a restraining order to end this public wrong, but the strike continued in defiance of the order. The power must be the court's to end the public wrong by a procedure which, while not impairing the truth-finding process, will not deny relief by a delay in affording it.

*Appendix C*

We heretofore considered whether it would be compatible with the necessity underlying the summary contempt power to place a limit upon the punishment which may be imposed upon an individual who disobeys an injunctive order. More precisely we asked whether it would be adequate to hold the consequences within those which ensue upon conviction for a "petty offense" as opposed to conviction for "crime." We concluded the underlying need could be met upon that basis. More precisely, we held the maximum jail term which may be imposed upon a summary trial is six months, and that a summary conviction for contempt would not entail the other consequences which flow from a conviction for "crime." *In re Buehrer, supra,* 50 N. J. at 517-522.

We stress that in *Buehrer* we were concerned with an individual and not with a corporate offender, and the central question was whether a six-month *jail* term would be adequate to satisfy the overriding necessity that a court order be obeyed at once. In concluding that it would suffice, we surveyed the jail sentences theretofore imposed in contempt matters and were satisfied the history of the subject supported the limitation we imposed. *In re Buehrer, supra,* 50 N. J. at 519-520. At that time, our "disorderly persons offense" carried a maximum jail term of one year; it has since been lowered to six months. N.J.S.A. 2A:169-4.

Later it was held in *Bloom* v. *Illinois,* 391 U. S. 194, 20 L. ed. 2d 522 (1968), that a two-year term could not be imposed in a summary trial for contempt. The Court did not decide what was the maximum tolerable when the contempt process is summary. We might add that the contempt in *Bloom* did not present the element of urgency

involved when an injunctive order is disobeyed. In *Bloom* the contempt consisted of the offer of a fraudulent will for probate. In any event, in deciding whether the jail term there imposed was incompatible with a summary proceeding, *Bloom*, as did *Buehrer*, recurred to the ultimate touchstone—necessity, and finding a lesser jail sentence would do, held a two-year sentence was excessive.

Here the offender is an artificial entity. The question is whether a corporation, which of course cannot be jailed, may insist its contempt is not punishable beyond some nominal fine unless the issue of its guilt is decided by a jury. The question is not whether a corporation charged with a *statutory* offense is entitled to the jury process. The subject here is a willful disobedience of an order of the court, and the critical question is whether such a monetary limitation upon trial without a jury would be compatible with the elementary need that the orders of the judiciary be obeyed and be obeyed at once if the underlying wrong which led to the order is to be ended.

It must be remembered that there is no universal right to a jury merely because of the risk of a dollar judgment. So far as money is concerned, judges in equity have always decided issues of civil liability, no matter how large the claim, without the aid of a jury. Indeed, with respect to violations of orders of a court of equity, such as the one here involved, it is clear the Constitution does not entitle a defendant to a jury when the litigant injured by the violation seeks dollar recompense. Thus we are asked to say that a judge who can decide the issue of breach when a litigant seeks relief for the violation is not a suitable finder of the facts if the imposition of the dollar liability has a punitive aim.

Certainly prior to *Bloom* it was not doubted that a corporate contemnor could be punishable by a fine in an amount commensurate with the wrong upon a finding of guilt made without a jury. We may start with the celebrated case of *United States* v. *United Mine Workers of America*, 330 U. S. 258, 91 L. ed. 884 (1947). There a fine of $10,000 was imposed upon the defendant Lewis and a fine of $3,500,000 upon the defendant Union, for violating a court order enjoining a strike. The Court held there was no right to a jury trial. The fine upon Lewis was upheld. As to the Union, the majority concluded that $700,000 should be imposed unconditionally with respect to the wrong done, with the balance of $2,800,000 of the fine made "conditional on the defendant's failure to purge itself within a reasonable time." The Court commented that (330 U. S. at 303, 91 L. ed. at 918):

> "In imposing a fine for criminal contempt, the trial judge may properly take into consideration the extent of the willful and deliberate defiance of the court's order, the seriousness of the consequences of the contumacious behavior, the necessity of effectively terminating the defendant's defiance as required by the public interest, and the importance of deterring such acts in the future. Because of the nature of these standards, great reliance must be placed upon the discretion of the trial judge."

It added (330 U. S. at 304, 91 L. ed. at 918):

> "But where the purpose is to make the defendant comply, the court's discretion is otherwise exercised. It must then consider the character and magnitude of the harm threatened by the continued

contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired.

It is a corollary of the above principles that a court which has returned a conviction for contempt must, in fixing the amount of a fine to be imposed as a punishment or as a means of securing future compliance, consider the amount of defendant's financial resources and the consequent seriousness of the burden to that particular defendant."

Prior to *Bloom*, it was held in *Cheff* v. *Schnackenberg*, 384 U. S. 373, 16 L. ed. 2d 629 (1966), that a six-month jail sentence imposed upon an individual adjudged guilty of contempt without trial by jury was valid. The Court announced that a six-month term would be the maximum it would thereafter permit in a summary contempt proceeding. It so ruled in an exercise of its supervisory power rather than in response to a constitutional mandate. In reaching that conclusion the Court noted that a "petty offense" was punishable by six months' imprisonment and a fine of $500. 18 U.S.C.A. § 1. We refer to *Cheff*, not for its immediate holding, but rather to contrast the Court's handling of the individual with its handling of the corporate defendant in the contempt proceedings. Although it granted *certiorari* to review a six-month jail sentence imposed on Cheff, the Court denied the petition of the corporate defendant, Holland Furnace, notwithstanding that the fine imposed upon it was $100,000. 384 U. S. at 375, 16 L. ed. 2d at 631. The significance of course is that while granting *certiorari* as to Cheff to decide whether a jail term in excess of the six months' limit upon a petty offense fixed by 18 U.S.C.A.

§ 1 could be imposed without a jury trial, the Court was not moved by the petition of the corporation even though it was subjected to a fine vastly in excess of the $500 maximum of that statute.

In no case has the United States Supreme Court held that exposure to a fine would alone raise a jury issue in a contempt proceeding. The speculation that some monetary limit might apply stems from a statement in *Duncan* v. *Louisiana*, 391 U. S. 145, 20 L. ed. 2d 491 (1968), which case did not involve a contempt charge. There it was held that an authorized statutory maximum of two years made the crime a "serious" one requiring trial by jury. The Court said, 391 U. S. at 161, 20 L. ed. 2d at 503:

> "In determining whether the length of the authorized prison term *or the seriousness of other punishment* is enough in itself to require a jury trial, we are counseled by *District of Columbia* v. *Clawans, supra*, to refer to objective criteria, chiefly the existing laws and practices in the Nation."

It is the words we have italicized, "or the seriousness of other punishment," which are argued to import some monetary figure separating the "serious" from the "petty" offense. We cannot be sure what other "punishments" were intended in *Duncan*. Perhaps loss of office or some comparable consequence was in mind, or perhaps the Court made the reservation simply because it could not be sure whether something other than a substantial jail sentence could later assume such proportions. Nothing in *Duncan* suggests that the amount of a fine would be pivotal. In any event, as we have said, *Duncan* did not involve a con-

tempt charge and thus the Court did not have the relevant question, whether a corporate contemnor must be accorded a jury trial if the fine exceeds a limit applicable to a statutory offense. We cannot assume *Duncan* intended silently to overrule *United Mine Workers*. We are satisfied such a limitation would deny the judiciary the capacity to deal with continued defiance by corporate offenders.

The Association relies upon *United States* v. *R. L. Polk & Co.*, 438 F. 2d 377 (6 Cir. 1971). A consent decree had been entered in 1955. In 1965 the government instituted "civil" and also "criminal" contempt proceedings. In 1969, after *Duncan* was decided, the trial court imposed a fine of $35,000 upon this corporate defendant. The defendant then argued that the fine could not exceed $500, the maximum authorized by the federal statute for "petty offense." As we understand *Polk*, the Court seized upon the reference in *Duncan, supra,* "to the objective criteria found in the existing laws of the Nation," and since under 18 U.S.C.A. § 1, "petty offenses" carried a maximum of six months and $500, *Polk* concluded that a fine in excess of $500 established the offense as "serious" and therefore worthy of jury trial. The difficulty with that exposition is the assumption that the liability of a corporation for contempt may be equated with the liability of a corporation for statutory offenses. In the case of a statutory offense, the Legislature has fixed the maximum. But as to contempt, with respect to which there is no statutory maximum, the court must face the question whether the judicial power will be set at naught by that monetary limit upon a summary trial.

We repeat that the question is not what ought to be done when a corporation transgresses a statute. The

question is what may be done when, as here, a corporation persists in defying the judicial process. We must return to the principle of necessity upon which the summary power rests and depends. The right to jury trial yields to that necessity. The issue is whether a right to a jury can be reconciled with the paramount demand that the court's process be obeyed forthwith. One need but reflect upon how weakened would have been the injunctive order in *United Mine Workers* if a fine in excess of $500 could not have been imposed absolutely or conditionally until after the issue of breach had been decided by a jury (with or without indictment by a grand jury[2]). Necessity, the ultimate test in this controversy, counsels that there be no artificial monetary limitation upon the summary process when an injunction is defied.

*Polk* was followed but without discussion in *County of McLean* v. *Kickapoo Creek, Inc.*, 51 Ill. 2d 353, 282 N. E. 2d 720 (Sup. Ct. 1972), where the fine of the corporate defendant "exceeded $500." On the other hand, the Supreme Court of Mississippi found *Polk* to be unpersuasive *McGowan* v. *State*, —— Miss. ——, 258 So. 2d 801 (1972), *cert. denied*, —— U. S. ——, 34 L. ed. 2d 298 (1972). Our Appellate Division also rejected the approach which *Polk* accepted. *In re Jersey City Education Association*, 115 N. J. Super. 42 (1971), certif. denied, 58 N. J. 603 (1971),

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[2] If a fine beyond the suggested limit makes the offense a "serious" crime entitling a corporation to trial by jury, it is not evident that a corporation could be denied the right to action by a grand jury either under Art. I, ¶ 7, of the State Constitution or perhaps also under the Fifth Amendment to the Federal Constitution guaranteeing grand jury action with respect to an "infamous" crime. If a grand jury action, too, were accorded, the efficacy of a court order would be further impaired.

*cert.* denied, 404 U. S. 948, 30 L. ed. 2d 265 (1971). There the Appellate Division correctly held that in the cases in which individuals were defendants, jury trial was accorded only because liberty was involved. As we pointed out in *Buehrer, supra,* 50 N. J. at 519-520, a jail term of six months was enough to ensure compliance with a court order, and for that reason the summary process could support no greater deprivation of liberty. But the dollar limitation which conventionally attends a violation of a *statute* would be wholly inadequate when the order of a court is defied.

Our Appellate Division in the case just cited referred to *Rankin* v. *Shanker,* 23 N. Y. 2d 111, 295 N. Y. S. 2d 625, 242 N. E. 2d 802 (Ct. App. 1968). Involved were violations of an injunction against a strike by public employees. *Rankin* was decided after *Duncan* and *Bloom.* It was argued that under *Bloom* the offense was a "serious" crime calling for a jury trial. In rejecting that claim, the majority said (242 N. E. 2d at 807-808):

> "Nor does the penalty to which defendant unions are subject—a fine of $10,000 a day or one fifty second (1/52) of the total amount of annual membership dues, 'whichever is the lesser' (Judiciary Law, § 751, subd. 2, Par. [a])—render the contempt a 'serious' crime. The determination, whether it is serious or petty under the decisions, turns not on the amount of the fine which may be imposed but solely on the length of the prison sentence. * * * Consequently, as the cases reveal, the fine, even though sizeable in amount, furnishes no valid criterion for the defendants' claim that the contempt charged against them constitutes a serious crime.

> Further, even if the amount of the permissible fine had any relevance, the fine—which in the last analysis must be borne by the union membership (see, e.g., Martin v. Curran, 303 N. Y. 276, 281, 101 N. E. 2d 683, 686)—is actually small, amounting, at most, to no more than a member's weekly union dues for each day of the contempt."

We think it appropriate to say that in the case before us the fine amounts to but $50 per member, and hence the impact upon the underlying membership is modest in the light of the public wrong. Although the impact per member is not decisive, it helps to put the constitutional issue in perspective.

We agree that the fine was appropriate. The judgment of the Appellate Division is affirmed.

FILED
May 21 1973

FLORENCE R. PESKOE
Acting Clerk

## APPENDIX D

**Per Curiam Opinion of the Superior Court of New Jersey, Appellate Division**

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In the Matter

*of*

The Freehold Regional High School Education Association, Alvin F. Applegate, Ernestine M. Blackledge, Walter Carney, Karen F. Delinsky, Elaine Clancy, Abraham M. Glass, Charles Jameson, Richard A. McCumber, Alexander R. Sinclair, Frederick J. Stine and Margaret L. Yates, Charged with Contempt of Court,

Defendants-Appellants.

[A-2395-71]

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Submitted January 2, 1973—Decided Jan 25 '73

Before Judges Carton, Mintz and Conklin.

On appeal from Superior Court of New Jersey, Chancery Division, Monmouth County.

*Messrs. Rothbard, Harris & Oxfeld,* attorneys for appellants.

*Mr. George F. Kugler, Jr.,* Attorney General of New Jersey, attorney for respondent State of New Jersey (*Mr. Alfred J. Luciani,* Deputy Attorney General, of counsel and on the brief).

Per Curiam

## *Appendix D*

In this school teachers strike case 11 teachers in the Freehold Regional High School District and their Education Association (Association) appeal from a judgment adjudicating each of them guilty of contempt for violation of a restraining order which, *inter alia,* enjoined a strike, picketing, and absence from work unless absence was permitted under the agreement between the Board of Education and the Association.

On appeal defendants contend that the non-jury trial was a nullity because the judge hearing the contempt proceeding was a County District Court Judge who could not validly try a Superior Court contempt charge. The District Court Judge was temporarily assigned to the Superior Court pursuant to the continuing order of the Chief Justice of September 9, 1971 entered in accordance with N. J. Const. Art. 11, § 4, par. 5 (1947); N.J.S.A. 2A:6-3.10 and N.J.S.A. 2A:6-14.9. The contention is frivolous.

Equally frivolous is defendants' contention that the order to show cause containing the *ad interim* restraint was fatally defective because it is entitled with the name and address of the attorneys for the Board of Education. The trial judge opined that "somebody had to type the pleadings." The contempt proceeding was actually instituted by the court pursuant to R. 1:10-2.

Defendants' assertion that the order to show cause was defective by reason of vagueness and deprived them of their rights under the Fourteenth Amendment lacks merit. Initially, we note that the validity of the restraining order is justiciable only on appeal from the order and not from an adjudication for contempt thereof. *Walker* v. *City of Birmingham,* 338 U. S. 307 (1967), reh. den. 389 U. S. 894 (1968); *In re Tiene,* 17 N. J. 170 (1954). Furthermore,

defendants were adequately apprised that they were not to participate in a strike against the Board of Education, not to picket, and not to be absent from their assigned places of work. *Cf. Bd. of Ed. of Newark* v. *Newark Teachers Union,* 114 N. J. Super. 306, 316, 317 (App. Div. 1971), certif. den. 58 N. J. 605 (1971), cert. den. 404 U. S. 950 (1971).

Defendants' contention that the contempt proceedings deprived them of their rights under the New Jersey Constitution, and the Thirteenth and Fourteenth Amendments is untenable. Public employees have the right to "collective negotiation," but not the right to strike. *Lullo* v. *Intern. Assoc. of Fire Fighters,* 55 N. J. 409 (1970). There is no issue of involuntary servitude. The individual teachers were free to quit but could not strike in concert. *In Re: William Block et al,* 50 N. J. 494, 499 (1967); *In re Education Assoc. of Passaic, Inc.,* 117 N. J. Super. 255, 261 (App. Div. 1971), certif. den. 60 N. J. 198 (1972).

Defendants further argue that the trial court erred in admitting into evidence against them a telegram sent by Alvin Applegate, president of the Association, to the Board of Education informing it that the Association voted to strike, advised closing the schools, and requested a meeting with the Board to resolve the current impasse. Apparently the telegram was admitted only as against the Association and perhaps Applegate. In any event, the telegram was in furtherance of illegal activity by all defendants and was properly evidential against all defendants. *Rules of Evidence* 63(8) and 63(9)(a) and (b); *State* v. *Boiardo,* 111 N. J. Super. 219, 228-230 (App. Div.), certif. den. 57 N. J. 130 (1970), cert. den. 401 U. S. 948 (1971). Nor do we find any error in the admission

into evidence of photographs and films depicting stike activity, although these exhibits did not contain the picture of any individual defendant. These exhibits were properly admitted for the limited purpose of showing that a strike in fact had occurred.

The record does not support defendants' contention that the trial judge relied on membership of the individual defendants in the Association as proof of their guilt. Actually the adjudications of contempt were predicated upon proof beyond a reasonable doubt of a strike, a picket line, the service of the restraining order upon each of the individual defendants, and their failure to appear at their work assignment as provided for in said order. The proof beyond a reasonable doubt shows that each individual defendant knowingly and wilfully disobyed the restraining order pursuant to the Association sponsored strike plan.

The court properly indicated that the individual defendants did not demonstrate their inability to attend to their chores by virtue of sickness or incapacity, which evidence, if presented, would have exculpated them. *Cf. State* v. *Kennedy,* 61 N. J. 509, 514 (1972).

We find no merit in defendant's contention that the trial court improperly consolidated the 12 contempt charges. Nor is there any substance to the contention under the present posture of the law that the trial court could not impose a fine of $100,000 against the Association in a non-jury contempt proceeding. *In re Jersey City Education Association,* 115 N. J. Super. 42 (App. Div. 1971), certif. den. 58 N. J. 603 (1971), *cert.* den. 404 U. S. 498 (1971). We are mindful that this issue may be the subject of further consideration by our Supreme Court by virtue of its granting a petition for certification

in *In the Matter of Ilona Mellor, et al, charged with contempt of court,* 60 N. J. 500 (1972).

As already noted, the Association was fined $100,000. The individual defendants received the following sentences:

Alvin F. Applegate, President of the Association—4 months Monmouth County Jail; $500 fine and costs of court.

Ernestine M. Blackledge—2 months Monmouth County Jail; $500 fine and costs of court.

Walter Carney—2 months Monmouth County Jail; $500 fine and costs of court.

Karen F. Delinsky—2 months Monmouth County Jail; $500 fine and costs of court.

Elaine Clancy, Vice President of the Association—3 months Monmouth County Jail; $500 fine and costs of court.

Abraham M. Glass, Executive Officer of the Association—3 months Monmouth County Jail; $500 fine and costs of court.

Charles Jameson, Executive Officer of the Association—3 months Monmouth County Jail; $500 fine and costs of court.

Richard A. McCumber—2 months Monmouth County Jail—$500 fine and costs of court.

Alexander R. Sinclair, Vice President of the Association—3 months Monmouth County Jail—$500 fine and costs of court.

*Appendix D*

Frederick J. Stine, Executive Officer of the Association—3 months Monmouth County Jail; $500 fine and costs of court.

Margaret L. Yates, District Vice President of the Association—3 months Monmouth County Jail; $500 fine and costs of court.

The strike, in violation of the restraining order, effectively closed the schools from April 20, 1972 to May 3, 1972. We are advised that he Association membership did not exceed 500 teachers, and that this strike and violation of the restraining order was a first offense. Under all the stated circumstances we consider the sentences excessive. The fine of $100,000 against the Association is hereby reduced to $50,000 and costs of court. The fines imposed upon the individual defendants, including costs of court, will not be disturbed. However, the respective custodial sentences to the Monmouth County Jail are hereby modified so that each defendant will serve one-half of the sentence originally imposed, and the balance of each respective sentence is hereby suspended. Actual incarceration is stayed until June 21, 1973.

Affirmed as modified.

## APPENDIX E

**Order to Show Cause [In Contempt] of the Superior Court of New Jersey, Chancery Division**

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MONMOUTH COUNTY

DOCKET NO.

CIVIL ACTION

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IN THE MATTER

*of*

THE FREEHOLD REGIONAL HIGH SCHOOL EDUCATION ASSOCIATION, ALVIN F. APPLEGATE, ERNESTINE M. BLACKLEDGE, WALTER CARNEY, KAREN F. DELINSKY, ELAINE CLANCY, ABRAHAM M. GLASS, CHARLES JAMESON, RICHARD A. McCUMBER, ALEXANDER R. SINCLAIR, FREDERICK J. STINE and MARGARET L. YATES, Charged with Contempt of Court,

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This matter being opened to the Court pursuant to Rule 1:10 by Cerrato & O'Connor, Richard T. O'Connor appearing, attorneys for The Board of Education of the Freehold Regional High School District, plaintiff in an action in this Court entitled The Board of Education of the Freehold Regional High School District vs. The Freehold Regional High School Education Association, et als, filed April 20, 1972; and it appearing to the Court that a Tem-

porary Restraint and Order to Show Cause was issued out of this Court on April 20, 1972 commanding The Freehold Regional High School Education Association, Alvin F. Applegate, Ernestine M. Blackledge, Walter Carney, Karen F. Delinsky, Elaine Clancy, Abraham M. Glass, Charles Jameson, Richard A. McCumber, Alexander R. Sinclair, Frederick J. Stine and Margaret L. Yates to cease and desist from their strike against The Board of Education of the Freehold Regional High School District, plaintiff;

And said Order further commanded that the named defendants and their members, officers, directors, committee members, employees, agents, and representatives, and all persons acting in behalf of or in concert or participation with said defendants are enjoined from doing acts concerning a strike or interfering with the duties of The Board of Education of the Freehold Regional High School District in its conduct of the public school system which acts were specifically set forth in the Temporary Restraint and Order to Show Cause attached hereto as Exhibit "A";

And that the above named defendants were all personally served with said Temporary Restraint and Order to Show Cause on April 20, 1972;

And that the above named defendants have failed and refused to obey the command of said Temporary Restraint and Order to Show Cause;

And the Court being of the opinion that the above named defendants may be guilty of conduct contumacious of this Court,

It is on this 21st day of April, 1972 Ordered that The Freehold Regional High School Education Association,

*Appendix E*

Alvin F. Applegate, Ernestine M. Blackledge, Walter Carney, Karen F. Delinsky, Elaine Glancy, Abraham M. Glass, Charles Jameson, Richard A. McCumber, Alexander R. Sinclair, Frederick J. Stine and Margaret L. Yates show cause before the Superior Court of New Jersey, Chancery Division, Monmouth County, Freehold, New Jersey, on the 5th day of May, 1972 at 9:00 a.m. or as soon thereafter as counsel may be heard, why said named defendants should not be adjudged in contempt of this Court for their failure to obey the Temporary Restraint and Order to Show Cause dated April 20, 1972 and served upon them.

It is further Ordered that the Prosecutor of Mon. Cty. or any Asst. Prosecutor he may designate be appointed to prosecute these proceedings.

It is further Ordered that a copy of this Order and the Affidavit filed herewith and a copy of the Temporary Restraint and Order to Show Cause, certified by Richard T. O'Connor as true copy, be served upon each defendant personally on or before April 24th 1972.

MERRITT LANE, JR.
Merritt Lane, Jr., J.S.C.

FILED
Apr 21 1972

MERRITT LANE, JR., J.S.C.

## APPENDIX F

**Temporary Restraint and Order to Show Cause of Superior Court of New Jersey, Chancery Division**

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MONMOUTH COUNTY

DOCKET NO.

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THE BOARD OF EDUCATION OF THE FREEHOLD REGIONAL HIGH SCHOOL DISTRICT,

Plaintiff,

*vs.*

THE FREEHOLD REGIONAL HIGH SCHOOL EDUCATION ASSOCIATION, ALVIN F. APPLEGATE, ERNESTINE M. BLACKLEDGE, WALTER CARNEY, KAREN F. DELINSKY, ELAINE GLANCY, ABRAHAM M. GLASS, CHARLES JAMESON, RICHARD A. MCCUMBER, ALEXANDER R. SINCLAIR, FREDERICK J. STINE, and MARGARET L. YATES,

Defendants.

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This matter being opened to the Court by Cerrato & O'Connor, atorneys for plaintiff, Dominick A. Cerrato appearing, and it appearing to the Court from the verified complaint and affidavit annexed thereto that immediate and irreparable damage will probably result to the plaintiff before notice can be given and a hearing had thereon, and for good cause appearing, it is this 20th day of April 1972,

*Appendix F*

ORDERED, that the defendants show cause before the Superior Court, Chancery Division at the Monmouth County Court House, Freehold, New Jersey on the 5th day of May 1972, at 9:00 A.M. or as soon thereafter as counsel can be heard why an Order should not be issued restraining, enjoining and compelling defendants to cease and desist from their strike against plaintiff;

And it is further Ordered that pending further Order of this Court, defendants and their members, officers, directors, committee members, employees agents, and representatives, and all persons acting in behalf of or in concert or participation with said defendants be and they are hereby enjoined from:

1. Causing, instigating, promoting, sanctioning, authorizing, carrying on, participating in, fostering, continuing, lending support or assistance to or aiding or abetting any strike, sitdown, slowdown, work stoppage, or other impediment to work, against the plaintiff or by any employee or employees of the plaintiff;

2. Picketing, congregating, parading, patrolling, loitering, gather or walking back and forth—or causing, instigating, promoting, encouraging, sanctioning, intimidating, coercing, counselling, or authorizing any person or persons to picket, congregate, parade, patrol, loiter or walk back and forth—in front or in the vicinity of the public schools, buildings, grounds, playgrounds, yards, or premises of the plaintiff, or operated or administered by the plaintiff, or in front of any buildings grounds, playgrounds and premises on or at which any instructional or guidance program is conducted by plaintiff;

3. Interfering with, obstructing, impeding, or delaying or attempting to interfere with, obstruct, impede or delay

the plaintiff in the performance of any of its duties and functions or in the conduct of its public school program;

4. Being absent from their assigned places of work during the times when their contractual obligations require their presence unless absence is permitted by the terms of the Agreement between plaintiff and defendant association, and

It is further Ordered that a copy of this Order and the complaint and affidavit on which it is based by served upon each defendant personally before April 21, 1972, and

It is further Ordered that defendants shall serve and file their answers upon plaintiff's attorney within 20 days exclusive of the day of service of this order to show cause and verified complaint and affidavit. If any defendant fails to do so, judgment by default may be rendered against such defendant for the relief demanded in the complaint. Defendants shall promptly file their answer and proof of service in duplicate with the Clerk of the Superior Court, State House Annex, Trenton, New Jersey 08625, in accordance with the rules of civil practice and procedure, and

It is further Ordered that the defendants have leave to move for dissolution or modification of the restraint herein on 2 days notice to Plaintiff, and

It is further Ordered that the restraint imposed herein shall expire on May 5, 1972 unless continued by further Order of this Court.

/s/ Francis X. Crahay
Francis X. Crahay,
A.J.S.C.

Filed
Apr 20 1972
Francis X. Crahay, J.S.C.

## APPENDIX G

**New Jersey and United States Constitution and Statutes**

N.J. Constitution, Art. 1, Par. 19:

> "Persons in private employment shall have the right to organize and bargain collectively. Persons in public employment shall have the right to organize, present to and make known to the State, or any of its political subdivisions or agencies, their grievances and proposals through representatives of their own choosing."

N.J.S.A. 2A:10-1:

> "The power of any court of this state to punish for contempt shall not be construed to extend to any case except the:
>
> "a. Misbehavior of any person in the actual presence of the court;
>
> "b. Misbehavior of any officer of the court in his official transactions; and
>
> "c. Disobedience or resistance by any court officer, or by any party, juror, witness or any person whatsoever to any lawful writ, process, judgment, order, or command of the court.
>
> "Nothing contained in this section shall be deemed to affect the inherent jurisdiction of the superior court to punish for contempt."

N.J.S.A. 2A:85-6:

> "Any person found guilty of a crime which by statute is declared to be a high misdemeanor, and

for which no punishment is specifically provided, shall be punished by a fine of not more than $2,000, or by imprisonment for not more than 7 years, or both."

N.J.S.A. 2A:85-7:

"Any person found guilty of a crime which by any statute is declared to be a misdemeanor, and for which no punishment is specifically provided, shall be punished by a fine of not more than $1,000, or by imprisonment for not more than 3 years, or both."

N.J.S.A. 2A:169-4:

"Except as otherwise expressly provided, a person adjudged a disorderly person shall be deemed to have been guilty of a petty offense and shall be punished by imprisonment in the county workhouse, penitentiary or jail for not more than 6 months, or by a fine of not more than $500.00 or both."

U. S. Constitution and Amendments

U. S. Constitution, Sixth Amendment:

"Amendment VI—Jury Trial for Crimes, and Procedural Rights

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the ac-

cusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

U. S. Constitution, Fourteenth Amendment:

"Amendment XIV.—Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representative; Disqualification of Officers; Public Debt; Enforcement

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."